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SPECULATION ON THE STOCK EXCHANGES AND PUBLIC REGULATION OF THE EXCHANGES

BY SAMUEL UNTERMYER

It is fortunate for the country that we are at last to have a dispassionate consideration of this vastly important subject in a forum where economic problems are fearlessly, dispassionately, and impartially discussed and analyzed on their merits. There has been so much of honest misunderstanding, senseless hysteria, and ignorant, demagogic denunciation of the Stock Exchange on the one hand, and on the other such a long, unbroken record of intemperate and misleading propaganda by the interested champions of the Exchange to justify the abuses of the system and its irresponsible form of organization, and such persistent misrepresentation of its critics, that it is a positive relief to find oneself in an atmosphere where the subject will receive the judicial treatment that its commanding public importance demands.

The partisan and disjointed discussions heretofore had, have been conducted under the unsatisfactory conditions under which much of our ill-digested legislation is considered, amid the heat, hurry, and confusion of committee hearings, distorted by bitterness and abuse of the champions of the reforms by the vast personal interests that conceive that their privileges are being attacked. There has been no opportunity for proper study and understanding. The merits of a proposed change of broad public policy can never be properly developed under such conditions. This is especially true, where, as here, there is arrayed on one side the most powerful body of financial interests in the land, with their endless business, social, and political influences and ramifications resisting reforms that are sought to be forced upon them, with unlimited funds and vast advertising patronage at their disposal and with incredible facilities for influencing public opinion through the nation-wide press bureau they are able to maintain.

The other side is represented only by a few scattered, disorganized volunteers with no personal interest in the question at issue, whose labors are prompted only by the public concern, and whose sole reward for their thankless championship is the enmity of the powerful army whose privileges are being assailed.

I repeat that it is therefore a privilege to find such a forum as this for the discussion.

I shall take the liberty of reversing the order in which the two questions have been submitted for consideration, so that they will read as follows: (1) Should the Stock Exchange be subjected to regulation? (2) Should such regulation include the suppression or restriction of speculation?

The New York Stock Exchange towers above all the exchanges of the country, exceeding many times in importance and in the magnitude of its dealings all the others combined. It absolutely controls the transmission and distribution throughout the country of the quotations of all the securities that are dealt in upon its floor, by exclusive contract with the Western Union Telegraph Company. All other exchanges are guided by its quotations. Their forms of organization and regulations are in the main framed on the lines of the New York Exchange, and I shall accordingly discuss the subject with reference to the New York Stock Exchange, intending thereby to include the others.

Permit me to explain at the outset that I have no patience with the legislators, agitators, demagogues, and ignoramuses throughout the country who regard the Exchange as a sort of gambling den or its membership as a coterie of gamblers whose activities should be suppressed. The Exchange is a wholesome public necessity. Without a legitimate public security market which is furnished by its machinery, properly controlled, no great business or financial enterprises would be possible. We can no more get along without it than without banks. It is, in fact, more important than any other agency of finance. Our ventures have reached a magnitude that private capital cannot support. Its elimination would soon paralyze the wheels of industry. It is not healthful or desirable that a few banking houses should monopolize the prestige and profit of acting as intermediaries between those who need the capital for these enterprises and the investors who are able to supply it. That need should be supplied by a public market for securities. It is because of its important place in the economic system that the greatest care should be exercised to confine it to its legitimate functions. Its power for usefulness is unlimited. Its disrepute is a loss and a misfortune to the entire community.

Judged by the standards of the past, no more honorable men than the general body of the membership of the Exchange can

be found anywhere in any branch of industry. In some respects the code of ethics is above that encountered in any other calling. Transactions involving fabulous sums are conducted and obligations incurred without a scratch of the pen, and are concluded and discharged day by day without friction or question.

Like every industry and profession it contains black sheep within its fold, but unlike others its regulations and practices have heretofore held out to them and to the gamblers whose tools they are temptations, inducements, and immunities of which they have freely availed themselves, to the detriment of the Exchange and the injury of the great body of its members.

There are phases of the business conducted on the Exchange, constituting at times the bulk of its dealings, that involve the most reckless and unconscionable forms of gambling, dishonesty, misrepresentation, and manipulation, and which have been so long tolerated that the members are obsessed on the subject of their right to continue these illicit transactions. Their state of mind is not unlike that which, until within a very recent time, had taken possession of officers and directors of railroad corporations as to their duties and obligations to the public and to their shareholders, and from which they are now slowly and painfully recovering. The same sort of awakening is in store for the Exchange, but its members will not see it. Methods that were considered legitimate ten years ago and that are still practiced in many quarters of the financial world are now seen to be intolerable. Others, such as the dealings of officers and directors with their corporations that are still permitted, will soon be defined as crimes, as they are in other countries. It will not, for instance, be long before bank officers and directors will be prohibited from exploiting their banks, and other corporate officers will be prevented from withholding information and speculating on advance knowledge.

The Exchange, properly regulated and administered, performs an invaluable service in our economic system, and is destined to still greater public usefulness if it can be rid of the abuses that inevitably attend its present irresponsible form of organization and can be placed under responsible public supervision.

I believe also that, except for the blunders of remaining open for two days in July after the world's other exchanges had closed their doors and of still permitting the evils of short selling and manipulation, our Exchange has on the whole met the exceptional

conditions arising out of the war with wisdom and conservatism. True, it has assumed powers over the property and destinies of the millions of security holders of the country that are not tolerated by any other body on earth, public or private, and that seem incredible, but that arrogation of power, as I shall endeavor to show, is due to the absence of the governmental regulation to which the Exchange should be subjected. There are other criticisms as to its present attitude in permitting short selling within the minimum prices fixed by its self-imposed regulations, and there are fundamental abuses which it refuses to and will never voluntarily correct and which can only be removed through government supervision, to which reference will be hereafter made.

There have, however, been many minor reforms inaugurated within the past two years under the spur of the exposures and public criticism of its practices that were made in the so-called "Money Trust Investigation" by the committee of Congress known as the Pujo Committee. Whilst the Exchange ungraciously refuses to admit that these reforms have been forced by the public agitation due to this investigation, I believe that is now generally recognized to be the fact. The Exchange has at last partially awakened to a realization of its sense of public responsibility, but it strangely continues to resist all attempts to enforce responsibility or to so control it as to permit any public authority to inform itself of violations of law by its members or of abuses that now exist or that may hereafter arise from time to time. Through the elaborate press bureau that it maintains under the name of the "Library Committee" its reforms are exaggerated and its abuses and defects are hidden as never before in its history. As the result of this systematic propaganda and of the temporary diversion of public interest to international affairs, it is becoming daily more difficult to secure the necessary attention to this subject that so nearly affects the fortunes of the entire community.

The oft-repeated warnings of the advocates of governmental regulation of our stock exchanges of the perils to the country of the absence of such regulation are demonstrated by recent events to have been prophetic and grossly understated, notwithstanding the fact that we have fortunately thus far passed through the present crisis without encountering the disasters that we have invited by the absence of public control. Like flashes of lightning illuminating the landscape on a dark night the experiences that have come to us from this world cataclysm have lighted up the obscure cor-

ners of this problem and have exposed the specious arguments against regulation that have so long been permitted to pass uncorrected. The community at last begins to get a glimmer of the important mission of the Exchange; to realize that it is a public institution and an integral part of our national financial system and not a private business; that it is ridiculous that it should pose—as it has up to this time—as a mere convenient meeting place between the members of an unincorporated association in the transactions of which the public has no interest, or at most a remote, academic concern.

We are at last able to appraise at their true value the claims of its members, to which, strange to say, they have in the past been able to secure the sanction of the courts, that the rights and obligations of membership are to be likened to those of a private club.

In the light of recent events, demonstrating its dominating influence in our national and international financial structure, it seems incredible that its discipline, regulations, and transactions are subject to no judicial or administrative scrutiny or review; that it is governed by no law other than its own unrestrained will; and that it and its operations have by the mere fiat of its self-made rules been consecrated and set apart, outside and beyond the law,—a law unto themselves.

Yet such is the amazing situation in which the country finds itself. Applying every possible test to the determination of whether this is or is not an accurate and moderate statement of the actual conditions, what do we find?

1. The Exchange is unincorporated and is as such subject to no legal regulations or restrictions other than those imposed by its own members. Although there is and has been for many years upon our books a statute entitled “An Act for the Incorporation of Boards of Trade and Exchanges,” it has not been found necessary to comply with that statute or to take out a charter under it.

2. Its membership is limited to 1100 persons. This limit was reached about forty years ago and has not since been permitted to be increased, notwithstanding the revolutionary changes in conditions of business and finance since that time. No public authority has any supervision over the selection or expulsion of members, the increase of membership, or over any matter connected with the formulation of its rules of trading or other

features of its management. Not even the courts are permitted to review its regulations for conducting the public business, or any other feature of its organization or manner of discharging its public duties. When a vacancy in its membership occurs through death, bankruptcy, resignation or sale of the right of membership, it can be filled only by a two-thirds vote of the Board of Governors, ratified by a majority vote of the Association. This action is also final and unreviewable by judicial authority or otherwise. By reason of this limitation of membership, a seat has of late years varied in price from \$30,000 to \$95,000, dependent upon conditions of business; and no securities can be bought or sold on the Exchange except through a member.

3. The exclusive power of discipline is vested in the Association through its committees. It may expel or suspend a member and thus destroy his reputation and occupation and deprive him of the right to earn a livelihood, on any grounds that it deems sufficient; and he has no right to review its action in the courts and can get no redress so long as he has had the opportunity of a hearing, without counsel, before the body composed of his competitors.

4. In the exercise of its unrestricted right of discipline, great abuses have developed. The Association requires every member to charge a fixed commission upon all purchases and sales for customers of securities that are listed on the Exchange, regardless of the price of the security. A share of stock that costs \$11 is charged with the same compulsory commission as one that costs \$200. Any member who violates or evades this rule or attempts by indirection to do so is subject to expulsion. The infraction of this regulation was characterized under oath by one of the most distinguished ex-presidents of the Exchange as "the most heinous offense a member can commit"—more heinous than frauds perpetrated by a member upon his customers, as is evidenced by the fact that the penalties which have at times been imposed for this offense have been more severe than those inflicted for obvious fraud. Expulsions and suspensions on this ground have been held not reviewable by the courts.

In the exercise of this unrestrained power of discipline the Exchange may expel a member for having had any dealings or communications with, or for even writing a letter to or speaking over the telephone with, a respectable member of a reputable

rival exchange, or for buying securities for or from or selling them to or for such a person, even though the securities are not listed or dealt in on the rival exchange, or for that matter on any exchange. Incredible as this may seem, members have in fact been severely disciplined on that account. It has resulted in the most effective boycott of men who have dared to accept membership in another exchange. As a result, men in good standing in the community have found themselves unable to dispose of securities owned by them that are listed on the New York Stock Exchange and not listed on the exchange of which they are members, solely because they have been guilty of membership in a rival exchange.

5. The Exchange is the sole judge of the conditions under which it will permit securities to be placed upon the official list of those that may be dealt in on its floor, and it may at its own discretion strike from the list securities that have been so listed, without notice either to the corporation or to its investors, who bought on the faith of the fact that the securities were so listed. Such action on its part is likewise not the subject of review or redress by the courts. The character and extent of the data that the Exchange shall from time to time exact from the corporations whose securities are thus listed for the information of the public rests solely with it. There is no protection to the public other than that which it chooses to afford, and no power to review or revise its action. Banks, life insurance companies, guardians, trustees, and others who hold, buy, and sell these securities are forced to rely entirely upon the voluntary and unreviewable action of the Exchange as affecting such securities. It formerly maintained on its official list securities of corporations that refused to furnish information of their affairs or even to disclose their earnings, and that were conducted as "blind pools" for the benefit of the insiders, who were thus enabled to manipulate the prices on rumors and "inside information." Amalgamated Copper and American Sugar Refining are illustrations of this class of dealings that were permitted. They had their alphabetical position on the list with the companies that were required to furnish information for public guidance. The only differentiating sign was an asterisk placed before the names of the "unlisted" corporations. They were placed there for gambling purposes and were at times by far the most active stocks on the list. That practice, happily, became a nightmare of the past

some years ago, but its discontinuance was not accomplished without a struggle. The men who foisted it upon the Exchange and kept it there for their own profit, many of whom were leaders of finance, were permitted for years to exploit the public in that way to the extent of many millions. It is only when we look back upon the extent of these buccaneering projects that we realize the vast and growing improvement in the morale of the Exchange.

6. The so-called "continuous quotations" of prices are not available to any individual or corporation in the United States except with the express permission of the Exchange, and there is no right of review from its fiat to the courts or to any public authority. It may at any time suspend the publication of quotations and leave the security holders of the country to their own devices, without information as to the transactions in this public security market.

The latest recorded revolt illustrating the extent of this despotic power is in the form of a suit instituted within the past two weeks at Pittsburgh by John L. Moore & Co., a brokerage house of that city, against the Western Union Telegraph Company, in which the plaintiff alleges that in the exercise of the agreement between the Telegraph Company and the Exchange forbidding the Telegraph Company to furnish quotations to any person not sanctioned by the Exchange, the Telegraph Company has been instructed by the Exchange not to furnish the plaintiff with quotations and as a result the plaintiff's brokerage business will be ruined.

In the present state of the law on this subject Moore & Co. can probably get no redress. The pretext on which the Exchange exercises such power to control the action of an interstate common carrier is its desire to suppress "bucket shops," which it is admitted cannot conduct their illicit operations without the aid of these quotations. The same, however, is true of a broker doing a legitimate business. It is said, for instance (I know nothing of the merits) that Moore & Co. buy and sell stocks and bonds only for cash, and that unlike most members of the Exchange they deal only in the actual stock certificates and do not even buy or sell on margin. For years and until the Exchange closed on July 30 they received these quotations that are essential to their business. Now they are arbitrarily refused.

While the suppression of bucket shops is a consummation quite as devoutly to be wished (and quite as far from realization)

as would be the prevention of manipulation of prices on the New York Stock Exchange, the bucketing of orders is a criminal offense and can be detected and punished as such, like every other offense. It should not rest in the unrestricted power of any body of private citizens, through their control over the operations of an interstate telegraph company, to determine for itself and without the right of appeal to the courts or to any public authority, and without even giving a reason or the opportunity of a hearing, who is and who is not lawfully conducting a brokerage business and who shall or shall not receive the information that is necessary to his business existence. It should not be permitted to maintain a dangerous monopoly under the pretext of acting as a self-constituted policeman, with the added power of judge and jury, to determine the fate of citizens in this *ex parte* fashion.

The sworn complaint of Moore & Co. may be untrue and the purpose of the Exchange may be commendable. The point is that the Exchange may, under existing law, admit its truth and still Moore & Co. can get no relief. To concede any such despotic power over the life of a legitimate business is a situation too perilous to be tolerated.

By the express terms of the agreement recently executed between the Exchange and the Western Union Telegraph Company, the quotations are collected upon the floor of the Exchange by the Exchange and by it transmitted to the Telegraph Company, which distributes them only to such persons and agencies as the Exchange may direct, so that these quotations that are at the foundation of the business of the brokers throughout the country remain at all times under the exclusive control of the Exchange.

Assuming that this vast power of business life and death over the brokers throughout the country is at present being honestly and judiciously exercised, does that fact justify its existence? Is it within the spirit of democratic institutions?

It is not so long since the power was used in the effort to destroy a small competitor in New York City—the Consolidated Exchange—and the latter was compelled to conduct a long struggle for existence.

The following instances fairly illustrate the character of some of the powers recently assumed and exercised by the Exchange over the business of this country and the destinies of security-holders, growing out of the pending European war:

1. The Exchange forbade its members, under pain of expulsion, from buying, selling, or dealing in any class of securities, whether bonds or stocks, whether listed on the Exchange or unlisted, except with the express approval of a special committee selected by the governors and then only under certain regulations and restrictions as to the price, terms of delivery, and other conditions promulgated by the committee from time to time.

2. If you or I happened to own securities on which we were forced to realize to meet our obligations, or chose for any other reason to do so, there was no way of selling them on or off the Exchange, through any member, publicly or privately, below the prices fixed by this committee, nor except through its consent. Any one who was concerned in such a purchase or sale was subject to discipline.

Other powers quite as drastic and comprehensive were assumed relating to the operations of what is known as the "Curb Market," with which the Exchange has no more legitimate concern than "the man in the street."

The Curb is also a public security market, entirely separate from the New York Stock Exchange, with an independent membership, but such is the power of the Exchange that the members of the Curb are not allowed by the Exchange to deal in any securities that are listed on the Exchange or that the latter may at any time choose to place upon its list. For defying this prohibition the Exchange would forbid its members dealing with any Curb member or buying or selling any security listed on the Curb. That would mean the instant extinction of the Curb.

The members of the Curb conduct their business in the open street, within a roped line fixed by the police. They are subject to the inconveniences and interruptions of business due to the inclemencies of the weather and the passing traffic. They are well able and have long desired to locate under the shelter of a roof, but there is a regulation of the Exchange which would in that event prevent a Stock Exchange member from dealing with a Curb member. The Exchange shows no disposition to relent or relax that rule. Hence the Curb Association, a body with its own regulations (to which it adheres quite as rigidly as does the Exchange to its rules) is forced to remain in the street and to surrender to the big Exchange whatever business in securities the latter may from time to time elect to take from the Curb and unto itself. It is hard to believe that such things are possible.

Within the past few days we have read of a meeting of the Exchange, widely advertised through its press bureau, at which resolutions were passed congratulating and thanking the Committee of Five for its services in the late emergency and showering praises upon themselves for the manner in which they conducted the public business in that crisis. On that same day and the preceding day the "shorts" took control of the market and smashed the minimum panic prices of July 30 to such an extent that this same committee was forced to reduce the minimum in certain active speculative stocks. But for the wisdom of the committee in establishing a minimum these short-selling gamblers would have been free to precipitate a panic as they have often before done. The resolutions were fairly well deserved but they would have been better earned if the committee had entirely prohibited short-selling in this crisis, as they could well have done and as has been done by the London Stock Exchange by its recent rules since it has been, as it now is, under rigid government regulation.

I am not discussing the wisdom or necessity of the recently adopted rules restricting dealings in securities in the crisis through which we are passing, nor the arbitrary control by the Exchange over the transactions of its own members for private account in securities with which the Exchange has no concern, nor in assuming, as it does, to dominate the outside bond and Curb markets and the entire course of security dealings throughout the country, as reflected from its fountain head in New York. These may be very wise provisions if enacted under the supervision of responsible officials or subject to the veto of some such authority. It is not necessary to enter upon the merits of that discussion. The fact that the Exchange is physically able without outside assistance to inaugurate and enforce such far-reaching regulations affecting the tens of millions of individual security holders and all the great corporations throughout the country, and that there is now no legal restraint upon its action, is the most eloquent argument in favor of the necessity for public regulation.

My criticism is not of what has been done to meet this emergency, but of a financial system that not only permits but which it is claimed by its authors and those who are executing its self-made law renders it *necessary* for a handful of private citizens to seize and exercise such vast powers *because* there is

no constituted authority to protect the public or with the right to restrain, direct, or review their action.

Herein lies the anomaly of our situation—unlike anything of its kind in the civilized world. If these gentlemen had chosen to permit dealings to continue after July 30, as many of them were desirous of doing and as they are said to have decided to do the night before, there would have been no public authority anywhere to restrain them. They would probably have bankrupted the banks, life insurance companies, and other public institutions. Fortunately for us these particular men at this particular juncture had the enlightened selfishness to realize that in the tottering markets which they would have encountered the following day if the Exchange had been opened the margins on their pledged collateral with the banks would have been exhausted and they would have bankrupted themselves. If the banks and brokers had been comparatively free of stocks and with plenty of cheap, “easy” money in hand, and a band of rich, reckless speculators had been in control, as has happened and may well happen again, imagine what a catastrophe could have been precipitated upon us with the cheerful, ever-ready aid of the “short sellers.” I do not mean to imply that any such brutal thing would have been done, although we have had some unfortunate experiences of that kind on a smaller scale at times. The fact that it would have been *possible*, and that there is no authority in any public officer to control such a situation, is the point I want to make in this connection.

The necessity for regulation is not to be tested by what was done but by what may be *lawfully* done under existing law without fear or opportunity of discovery or punishment, under given conditions and in the absence of regulative and restrictive laws. Security markets have been habitually raided and manipulated in the past and there has been no legal responsibility or redress. Assuming this did not happen to any extent in this emergency, does that fact render it any less essential to ensure legal protection against its recurrence, especially now that we know the extent of the peril? Why have we any repressive laws if we can rely on people refraining from public injury without fear of punishment? Does anyone doubt that the crashing of values during the two days the Exchange unwisely remained open was assisted if not precipitated by short selling? Or that it would have been more acute if speculators had been a trifle more daring

or inside information had happened to be available? Or that it would not have happened anyway if the Exchange had not closed when it did? Why should the determination of such vital public policies be left in private and interested hands? It is incongruous and unthinkable no matter how well the power may have been exercised. Banks, trust companies, railroads, life and fire insurance companies, and a vast number of other industries in which the public is far less interested than in the Stock Exchange, were formerly regarded as purely private enterprises. It seems a long time and yet it is not so long since anyone would be so bold as to question the wisdom of their regulation. The pure food law, packing-house inspection law, and factory inspection laws are a few of the multitude of instances that will occur to you of the growth and recognition of the modern demand for supervision of industries involving the public welfare and protection.

The Stock Exchange and Clearing House Associations, the operations of which are more important to the public credit, security, and stability than any of them, are the only ones that have managed to remain immune. It is a great tribute to their power and is due also largely to the fact that their activities are highly specialized and no one has been sufficiently interested to educate legislative bodies to the perils of the situation. The present crisis has done much to accomplish this as to stock exchanges, and the new currency bill will in time so far supplant the clearing houses or curtail their powers as to render them a negligible quantity in the financial system.

How differently these things are done "on the other side." And how much we yet have to learn from them. Immediately following the declaration of war and before England entered the conflict, the British Government, through the Treasury Department, promptly stepped in and closed the London Stock Exchange and it has ever since determined its policy. It will be for the British Government and not for the governors or members of the London Stock Exchange to say when and under what conditions it shall reopen. The French and German exchanges are and always have been essentially government institutions. All their operations are at all times under the most rigid and minute governmental regulation. There are elaborate statutes providing the conditions under which securities may be listed and dealt in and for the active participation of government officials in the conduct of the exchanges.

In like manner the Dutch Government at the outbreak of hostilities promptly took control over the Amsterdam Stock Exchange and has ever since directed its policy, although Holland is not at war. We alone permit this vast power to remain in private and interested hands.

Much that is confusing and misleading has been said and written in the course of the discussion of this subject as to the constitution of the Continental exchanges and more particularly as to the experience of Germany in its unsuccessful and disastrous attempts to stop speculation. The manifest purpose of this argument has been to lead the uninformed to believe that the efficacy of the then and now existing government regulation and jurisdiction over the general business of the Stock Exchange was in some way involved in that controversy, that it had proven a failure, and that the regulatory law had been repealed or materially changed so that it now conforms more nearly to the claims of the opponents of government control.

In order to make it entirely clear that there is no basis for any of these contentions, and at the same time to demonstrate the wisdom, efficiency, and success of government control, it may be proper at this point to refer briefly to the German and French systems and to the change that was found advisable in the German laws that had been passed for the purpose of restricting speculation and that had reference solely to that branch of the subject. There has never been any change in the situation of the German and French stock exchanges as essentially government institutions. They are and have been as completely a part of the machinery of the government as is our Treasury Department or the Bureau of Commerce or any other of our governmental agencies. Their membership consists of private individuals, although that of the Paris Bourse is limited to seventy members, all of whom are government appointees and enjoy a government monopoly of the business.

In 1896 the German Agrarian party procured the enactment of a law that was intended to modify the then existing governmentally approved regulations so as to curb speculation in grain, commodities, and mining and industrial securities. The subject of the legislation is admirably treated by Professor Henry C. Emery, of Yale University, to whom we are to have the pleasure and privilege of listening today, in a carefully considered article published in the *Yale Review* of May, 1908, under what seems

to me the misleading title of "Ten Years Regulation of the Stock Exchange in Germany." The features of the law discussed by Professor Emery had to do entirely with the attempts to limit speculation in stocks of mining and industrial companies. It did not seek to do away with or modify the complete government control of the machinery and operation of the exchanges, which were then and ever since have been and are now a part of the fundamental statute law of the German Empire. It was increased and amplified rather than restricted by the law of 1908 to which Professor Emery refers as the act repealing the law of 1896.

The course of the legislation of 1896 is thus accurately described by Professor Emery:

It should be said, however, that the original bill was the result of a very remarkable inquiry made by a special commission, whose report constitutes the most important body of material on the whole subject of speculation. The proposals of the commission, recognizing as they did the necessity and legitimate function of speculation in modern business, were relatively moderate. In the Reichstag, however, the Agrarian party had the upper hand and much more radical provisions were included in the act as finally passed. Without considering the regulations providing for a closer government supervision of exchange dealings, we may note at once the three most important provisions.

1. All "Exchange dealings for future delivery" (*Borsentermingeschäfte*) in grain and flour were forbidden.

2. All "Exchange dealings for the account" (*Borsentermingeschäfte*) in the shares of mining and industrial companies were forbidden.

3. An "Exchange Register" was established in which was to be entered the name of every person who wished to engage in exchange transactions for future delivery. Contracts made by two persons entered in the register were declared binding and exempt from the defence of wager. Where either party was an unregistered person the contract was void.

It is claimed that the effect of this legislation was (1) to prevent dealings in commodities for future delivery and in mining and industrial shares for the "account" (which means transactions that are to be adjusted at the next monthly settlement), and (2) thus to divert German capital to the financial centres of other countries and to build up the great banking houses at the expense of the smaller and less prominent bankers by reason of the fact that the latter, who also received money on deposit, feared the injury to their reputations as conservative bankers from the placing of their names on the register.

The result of the prohibition against dealings in mining and industrial shares "for the account" was to require them to be settled for and taken up the following day. This is now and always has been the rule with us as to all transactions on the Exchange, but in Germany the settlement of these transactions is made monthly and in England semi-monthly. In order to meet this requirement the course of business had to be altered so that the brokers could borrow from the bank or bankers, with the securities as collateral, the money with which to pay for the purchases made, as is done with us. The only effect of the modification in 1908 of these provisions of the law of 1896 was to reverse this practice and to reinstate the method of monthly settlements as being better adapted to the customs prevailing in Germany.

Whilst the history of this legislation and its effects may be instructive on the merits of permitting speculation within certain limits on public exchanges, it is difficult to understand what it has to do with the main proposition we are here to discuss—whether there should be *some form* of government supervision, regulation, and control of the Stock Exchange.

Whether, to what extent, and under what restrictions speculation shall be permitted have nothing to do with the determination of that fundamental question.

Let us not be misled on this point. There has long been the most effective governmental regulation in the Continental countries and there is no proof of failure or friction from that cause. From all accounts it has been wholesome and in the public protection, except where it has gone the length of attempting to outlaw all forms of speculation. Whether the extension of such regulations to the extreme point to which it was attempted in Germany by the law of 1896 was wise or proved effective is a debatable question, with which we have nothing to do as bearing upon this branch of the discussion.

The first six sections of the German law of 1908, consisting of 38 sections and occupying 79 pages of U. S. Senate Document No. 574, which is said to have modified and superseded the law of 1896 on the subject of speculation, and which is the existing law regulating stock exchanges in Germany, read as follows:

Section 1. Exchanges may be established only with the permission of the state governments (by which is meant the governments of the federal states of the German Empire). The latter may also order the suspension of operating exchanges.

The state governments exercise supervision over the exchanges, which supervision may be intrusted to commercial organizations (the chambers of commerce and commercial corporations).

Notifying offices, clearing banks, clearing associations and similar institutions connected with the exchanges, are also subject to the supervision of the state governments or the commercial organizations exercising the direct supervision.

Section 2. The state governments are to be represented on the exchanges by state commissioners, who shall control, in accordance with the detailed instructions given to them by the state governments, the transactions on the exchanges, and enforce the laws and provisions concerning the latter. The commissioners are authorized to be present at the business conferences of the members of the exchanges, and to call the attention of the said members to any abuse which may take place. They are also required to report all abuses on the exchange and to suggest preventive measures.

The activities of the state commissioners in particular exchanges may, with the approval of the Bundesrat, be restricted to coöperation in the proceedings of the courts of honor, or, in case of small exchanges, the appointment of state commissioners may be entirely dispensed with.

Section 3. An expert exchange committee (Borsenausschuss) is to be formed with the purpose of reporting upon matters which are, according to this law, within the jurisdiction of the Bundesrat. The exchange committee is authorized to tender its motions to the Imperial Chancellor and to consult with experts.

The exchange committee is to consist of not less than thirty members, who are to be elected by the Bundesrat for a period of five years. Members of the committee are eligible for reëlection. One half of the members are to be elected upon nomination by the members of the exchange. The Bundesrat is to determine the number of candidates which the individual exchange departments may nominate. The election of the other half is to take place with special consideration of the conditions of agriculture and industry.

The regulations for the committee shall be enacted, after a conference with the latter, by the Bundesrat. The daily remuneration and traveling expenses to be allowed to the members of the committee are to be fixed by the Bundesrat.

Section 4. Regulations must be issued for each exchange separately.

The regulations must be approved by the state government. The latter may demand the incorporation of certain provisions in the regulations of the exchange, and particularly the incorporation of the provision which stipulates that the interests of agriculture and allied trades be adequately represented in the boards of directors of the produce exchanges.

Section 5. The exchange regulations shall contain provisions concerning (1) the administration and the departments of the exchange, (2) the transactions authorized on the exchange, (3) the admission of the exchange, and (4) the quotations of prices and rates.

Section 6. The regulations may allow the use of the exchange for branches of business outside of those designated in section 5, figure 2, unless particular sections of this law (secs. 42, 43, and 51) provide to the contrary. In the latter case the persons concerned may lay no claim to the exchange for any purpose other than that for which it was established. The Bundesrat is authorized to prohibit either completely or partially the use of the exchange for particular branches of business.

The Bundesrat is a department of the Imperial Government. The regulations that have been established under this authority cover in the most minute detail every feature of administration.

"Suspension over the brokers shall be exercised by the Chamber of Brokers (in which the government is represented) and the State Commissioner."

Elaborate provisions are made for the trial of a member for violation of the rules by a so-called "Court of Honor," in which the government representatives participate, and for the right of appeal. The requirements for the listing of securities constitute the most significant and carefully worked out—as they are by all means the most important to the public—of all the features of this splendid body of laws. They involve the fullest disclosure of all the details of the corporate assets, securities, business, earnings, etc., and the issue of a public prospectus containing the details required by law to be specified when the securities are offered for sale.

Time will not permit and it will serve no useful purpose to discuss the many other particulars of this model legislation. Suffice it to say that at every step the public safety and welfare are considered and its interest is safeguarded. The same is true of the French law, which is equally exacting in its demands for official supervision of the exchange and publicity of the affairs of all corporations whose securities are there listed.

The contrast between the solicitude and protection with which the transactions on the Continental exchanges are surrounded in the public interest and the reckless disregard of the public that has characterized our failure to deal with this subject is not flattering to our capacity for self-government.

A passing survey of the intimate public relations of the Stock Exchange to our national and international financial life will demonstrate the enormity of the offense of omission of which Congress has been guilty in permitting its organization, management, and operations to be conducted throughout all these years without supervision or control. Many of the vast illegitimate fortunes that have debauched our citizenship are attributable directly to that cause. For many years the pretended market prices of securities of our greatest corporations have been "rigged" and manipulated at the will of a handful of gamblers and operators, and the people of the country have been literally robbed of hundreds of millions of dollars through such transactions. Some of the best known names in the country were those of men who amassed great fortunes from the recognized business of "operators" in the securities of given corporations that they

were employed to manipulate, sometimes on the "bear" side and sometimes on the "bull" side of the "market." Nowhere was there any restraint upon the malign activities of these men or their powerful and respectable principals, among whom were numbered the greatest financiers of the country.

The following from the testimony of Mr. Frank K. Sturgis, one of the then governors and a former president of the Exchange, before the Pujó Committee is instructive on this point:

Q. Very well; that is an answer. How do you justify as legitimate the transactions of a pool or syndicate in giving out buying and selling orders to brokers for the purpose of lifting the price of the stock or of depressing it?

A. Those are the acts of individuals. I cannot be responsible for what thousands of people throughout the country do.

Q. Do you seek to justify it?

A. It depends entirely upon circumstances. I have already said that under certain conditions, orders given out, commissions paid, no collusion whatsoever, the broker who buys not having the slightest idea where the order comes from that the broker executes to sell—I say it is not an illegitimate transaction.

Q. . . . Will you be good enough to answer that question? Is not the operation, at times, resorted to to depress prices and at other times to lift prices?

A. Yes; I can consistently answer that.

Q. You approve of those transactions, do you?

A. I approve of transactions that pay their proper commissions and are properly transacted. You are asking me a moral question and I am answering you a stock-exchange question.

Q. What is the difference?

A. They are very different things.

Q. I thought so. There is no relation between a moral question, then, and a stock exchange question?

A. Sometimes.

Another witness (Mr. Morse at p. 719) described the mechanism of manipulation as practiced on the Exchange as follows:

He is the gentleman who manipulates the stock, giving the buying and selling orders.

If he merely wishes to make a stock appear active, he gives buying and selling orders in about equal volume; if he wishes to put up the price, he gives an excess of buying orders; if he wishes to depress, he gives an excess of selling orders.

Statistics were presented to the Pujó Committee of thirteen selected active stocks dealt in on the Exchange, showing day by day, month by month, and year by year for many years, and up to the time of the inquiry in 1913, the character and extent of the dealings, by way of illustrating the fabulous proportion to which manipulation had been permitted as the result of the absence

of regulation by public authority. It is impracticable to reproduce those schedules here, nor was it claimed that all these transactions represented manipulation, but the following summary from the report of the committee, based on that evidence, will give a faint conception of the extent to which this orgy of gambling was carried:

Stating the results shown, only in the most general way, it appears:

1. That there has not been a year since January 1, 1906, when the Reading Co.'s entire common stock issue listed and subject to sale was not sold at least twenty times over and from that on up to forty-three times; that in a single month of that period it was sold six times over and that in only two months of the entire period was it sold less than once over in a single month; and that although it is a dividend-paying stock the number of shares transferred on the company's books averaged for the period 8.6 per cent of the shares sold.

In 1906 and 1907 there were in all 1,400,000 shares of Reading Common stock listed. There were over eighty-one million shares sold in that time, starting at \$164 per share and ending at \$90. Those transactions represented over eleven billion dollars in money in sales and the same amount in purchases.

2. Summarily stated, it further appears that in each year since January 1, 1906, the entire listed common stock issue of the United States Steel Corporation has been sold five times over each year on the average, while the number of shares transferred on the company's books has averaged 25 per cent of the number sold.

In United States Steel with 5,084,000 shares of common stock outstanding there were seventy-four million shares sold and the same number bought in 1909 and 1910. In a single month (January 1910) there were over six million shares sold.

It will be said that this largely represents speculation. But is it *honest* speculation or speculative excitement brought about by pool manipulation? What part of it is pure manipulation?

Here again there have been selected by way of object lesson only a few of the instances that might be multiplied, but prominent cases have been taken to illustrate the point. Until these practices are made discoverable and punishable there is no reason why they should not be repeated when conditions are again favorable.

Many of our great fortunes have been amassed by these methods. Who first knew when U. S. Steel common stock was to be put upon a dividend basis? Or when Union Pacific was to increase its dividend to 10 per cent? Or when Amalgamated Copper would reduce or pass its dividend? Or when and on what basis it would resume dividends? The determination of these questions generally rests with one or at most a few men in each company. It was natural that they should make use of their advance knowledge so long as there was no law or public sentiment to restrain them. But the temptation to force dividends and to suspend dividends and otherwise to use their vast power are too great. They must be removed if we are ever to have honest corporate management.

It may be that under the new order of things we shall not have the same class of men in our boards of directors. That is probably true. The incentives will no longer be there. They were dishonest incentives but strange to say it was not considered dishonest for a trustee to exploit his shareholders. It was considered rather clever even to the point of selling the stock of his own company "short" and shaking out his shareholders.

It should be made impossible for the men who are in control of these vast enterprises to go on fleecing the public. It is high time that they were brought to realize that they are trustees for their shareholders.

3. That in the same period the entire common stock issue of the Amalgamated Copper Co. has been sold eight times over each year, on the average, while the number of shares transferred has averaged about 20 per cent of the number sold.

4. That since January 1, 1906, the entire listed common stock issue of the Union Pacific Railroad Co. has been sold eleven and one-half times over each year, while in 1912 the number of shares transferred was only 16 per cent of the number sold.

5. That in 1912 the entire listed common stock of the American Can Co. was sold eight and one-third times over, while the number of shares transferred was 25 per cent of the number sold.

6. That since January 1, 1906, the entire listed common stock issue of the Rock Island Co. has been sold twice over each year on the average, while the number of shares transferred has averaged a little more than 27 per cent of the number sold.

7. That since January 1, 1906, the entire common stock issue of the American Smelting and Refining Co. has been sold twelve times over each year on the average, while the number of shares transferred has averaged about 18 per cent of the number sold.

8. That since January 1, 1906, the entire listed common stock issue of the Erie Railroad Co. has been sold more than twice over each year on the average, while the number of shares transferred has averaged only 30 per cent of the number sold.

9. That since January 1, 1906, the entire listed common stock issue of the Consolidated Gas Co. has been sold more than once over each year on the average, while the number of shares transferred has averaged only about 40 per cent of the number sold.

10. That since January 1, 1906, the entire listed common stock issue of the Brooklyn Rapid Transit Co. has been sold six times over each year on the average, while the number of shares transferred has averaged 23 per cent of the number sold.

11. That since January 1, 1903, the entire listed common stock of the Colorado Fuel & Iron Co. has been sold five times over each year on the average—in 1906 eighteen times over—while the number of shares transferred has averaged less than 20 per cent of the number sold.

12. That in October, 1912, the first month during which the common stock of the California Petroleum Co. was listed, the entire issue was sold more than three and one-half times over; and

13. That in the seven months from April (when it was listed) to October, 1912, the entire common stock issue of the Mexican Petroleum Co. was sold nearly nine times over.

In answer to this showing we are told,

1. That these statistics do not prove the manipulation of prices since there is no way of determining which of the transactions represented honest speculation and which represented dishonest speculation in the form of manipulation or fictitious purchases and sales; and

2. That these transactions are now made unlawful in the State of New York through the enactment in 1913, following the disclosures of the Pujo Committee, of a bill entitled "Manipulation of Securities," by which statute such acts are constituted misdemeanors.

In point of fact the law in question is a mere blind. It does not define manipulation. On the contrary it legalizes and per-

petuates the existing abuse by excluding the worst features of manipulation from the definition, which should have included them. In defining manipulation the offense is made to apply only to cases in which no simultaneous change of ownership is effected. It is confined by the terms of the act to "all *pretended* purchases or sales whereby no simultaneous change of ownership is effected." The bill is aimed only at fictitious transactions. Manipulation of securities is not now accomplished to any appreciable extent by fictitious transactions, although it was formerly conducted at times by that means. As now practiced it *does* result in a change of ownership, so that the most widespread forms of manipulation practiced on the Exchange are not reached by this bill. It stands in the way of effective legislation to prevent manipulation.

I do not propose to discuss here at any length the ethics or merits of speculation except in so far as it is accompanied by manipulation or short selling. There is much to be said in support of the argument that there can be no broad and active public market in the absence of speculation. If it can be established that there should be regulation, public authorities will determine the subsidiary question of whether and if so to what extent and under what conditions speculation shall be permitted.

An interesting and instructive pamphlet has been published on this subject within the present year by Mr. John Henry Piper, entitled "The Technology of Stock Market Manipulation."

The author quotes as follows from the book of Mr. W. C. Van Antwerp (now one of the governors of the Stock Exchange, who conducts its vast press bureau) entitled "The Stock Market from Within":

The great evil of speculation consists in the buying of securities by uninformed people who cannot afford to lose.

He analyzes and dissects that assertion with great skill, evidencing an intimate knowledge of stock market technique, and concludes with the suggestion that he has proved that Mr. Van Antwerp should revise this statement so as to read as follows:

The great evil of speculation consists in the buying and short selling of securities by the people who cannot afford to lose all the time, or who do not lose all the time but who do lose all, in time.

Or:

The great evil of speculation in Wall Street is the buying and short selling of stock by people deluded with the idea that they speculate

in values, whereas they only gamble in manipulated prices; and this evil will never be corrected until the people are informed that the essential thing for a speculator to know is the technical or *manipulated position* of the price of a stock in relation to the plan of campaign that is being engineered by outside financial powers who have the public, the Stock Exchange, especially the heads of it, under their heel.

Summarizing Mr. Piper's deductions, they are based on the following premises, which I believe are in the main correct as applied to the small operators and people of limited means who speculate in stocks and who are not members of pools or "insiders" with unlimited means for manipulating or controlling the market in the particular stock:

1. That about 98 per cent of those who speculate in Wall Street sooner or later come to grief.

2. That with the development of "high finance" (which he characterizes as synonymous with dishonest finance) the dealings on the Exchange have become mainly speculative and that prices are regulated, not by intrinsic values, but by the technical phase of the market created by the manipulation of the particular security by the big interests that happen to be interested in operating in it at the time, except as to the small proportion of dealings that are of a strictly investment character.

3. That the man who bases his speculative operations in a given stock upon a study and mastery of the past, present, or future merits of the property is bound to lose, as against the speculator who ignores those factors but acquaints himself with the identity and purposes of the individuals or men constituting the pool who are dealing in the stock; that if they are operating without price limits or within certain limits to bring about a rise or fall in the price or to make money trading back and forth and have the necessary means or financial support, the stock will fluctuate within those limits regardless of its merits so long as that sort of activity is being continued.

In the main these propositions are true. *Manipulation of prices is the great curse of the Exchange.* It paralyzes its usefulness. The arguments in favor of speculation are destroyed by the presence of manipulation. It is said by the defenders of speculation that it represents the collective judgment of the value of a security; that besides creating an active market it furnishes the supreme test of value. Whether that be true as applied to *honest* speculation it is not necessary to determine so long as manipulation is tolerated. Manipulation is *dishonest* speculation. It is playing with marked cards. It converts the Stock Exchange into a mock auction. If there were no other reason for demanding

governmental supervision of the Exchange (and there are many apart from those already discussed), the fact that without regulation manipulation cannot be discovered, would be conclusive of its necessity. Manipulation may not exist at the moment, but when confidence, activity, and speculation revive it will exist in the future as it has in the past unless it is checked by regulation that will furnish the means of discouraging and punishing it.

There may be said to be three principal forms of manipulation, apart from those that were formerly conducted through what are known as "wash sales" and fictitious transactions, which have largely been abandoned, and others which it will not be necessary to discuss.

1. The most common and most vicious form is effected by what are in substance bogus purchases and sales to create a false appearance of activity for the purpose of unloading the stock on the public at high prices. The same person or group gives buying orders to one set of brokers and selling orders to another but the selling orders exceed in volume the buying orders until the stock is marketed. The apparent purchases and sales may and often do exceed the actual purchases by the public ten or twenty over. In order to actually unload one hundred shares on the public the manipulator may have to apparently deal in thousands of shares. So long as commissions are paid on these sham transactions on both sides of the bargain the Exchange has regarded them as entirely legitimate, even though the real nature of the dealing is apparent from their volume and from general report and can readily be verified from the books of the brokers, to which the Exchange has free access at all times.

2. A series of transactions conducted for the purpose of acquiring or selling a large block of the stock of a given corporation not for investment but with the intent of realizing an immediate profit, brought about by purchases and sales that are calculated to affect the price in the way best adapted to accomplish the end in view. If the purpose be to accumulate stock so as to sell at a substantially higher level, the plan involves selling part of the accumulations as the stock rises so as to depress the price and then make larger purchases. If the intention is to sell the opposite course is adopted. The ultimate object is to buy stock that you do not want or to sell stock that you do not want with the view of affecting the price.

3. Where a new security is to be introduced, instead of ad-

vertising its merits by the publication of a prospectus or by open solicitation, the security is here again given a false appearance of activity to attract dealings. After the public has been led to buy on the assumption that it is acquiring a security with an active market that is readily saleable, those who were interested in creating this impression and who have probably disposed of the stock they had to sell find it unnecessary to continue the heavy expense of paying commissions on what are in effect fictitious transactions, and the buyer's apparently active market gradually and sometimes suddenly fades away.

Under the head of "Manipulation of Prices" the Hughes Commission had the following to say:

A subject to which we have devoted much time and thought is that of the manipulation of prices by large interests. This falls into two general classes:

1. That which is resorted to for the purpose of making a market for issues of new securities.

2. That which is designed to serve merely speculative purposes in the endeavor to make a profit as the result of fluctuations which have been planned in advance.

The first kind of manipulation has certain advantages and when not accompanied by "matched orders" is unobjectionable *per se*. It is essential to the organization and carrying through of important enterprises, such as large corporations, that the organizers should be able to raise the money necessary to complete them. This can be done only by the sale of securities. Large blocks of securities, such as are frequently issued by railroad and other companies, cannot be sold over the counter or directly to the ultimate investor, whose confidence in them can, as a rule, be only gradually established. They must, therefore, if sold at all, be disposed of to some syndicate, who will in turn pass them on to middlemen or speculators, until in the course of time they find their way into the boxes of investors. But prudent investors are not likely to be induced to buy securities which are not regularly quoted on some exchange, and which they cannot sell, or on which they cannot borrow money at their pleasure. If the securities are really good and bids and offers *bona fide*, open to all sellers and buyers, the operation is harmless. It is merely a method of bringing new investments into public notice.

The second kind of manipulation mentioned is undoubtedly open to serious criticism. It has for its object either the creation of high prices for particular stocks, in order to draw in the public as buyers and to unload upon them the holdings of the operators, or to depress the prices and induce the public to sell. There have been instances of gross and unjustifiable manipulation of securities, as in the case of American Ice stock. While we have been unable to discover any complete remedy short of abolishing the Stock Exchange itself, we are convinced that the Exchange can prevent the worst forms of this evil by exercising its influence and authority over the members to prevent them. When continued manipulation exists it is patent to experienced observers.

The fact is that manipulation is dishonest whether resorted to for the purpose of introducing a new security or for any other purpose. True, it is six years since the Hughes Commission made its report and there were many things then tolerated in corporate

management and in the financial world generally that would not dare be attempted today, thanks to the exposure of corporate abuses by the much-despised "reformers" and to the improvements in moral standards of business for which their unwelcome activities are responsible. But it is still inconceivable that even in 1909 a body of New York gentlemen as distinguished as were the members of this commission should have become so permeated with the customs and atmosphere of the financial world in which they moved as to have been led into putting in an official document the statement that manipulation "which is resorted to for the purpose of making a market for issues of new securities is unobjectionable *per se*," or that "It is essential to the organization and carrying through of important enterprises." It is nothing of the kind. It is distinctly disreputable and the Exchange will shortly be made to see it in that light as they have been taught to see other practices that they once thought to be legitimate.

Is it to be wondered at that no legislation looking to the correction of the abuses that were pointed out by this Commission followed its report and that nothing was done in that direction until July, 1913, following the public exposure by the Pujo Committee of the same conditions that this Commission privately investigated? Is there any occasion for surprise that there was no abatement of the practice of manipulation in view of the quasi-encouragement lent to it by this report? It is no exaggeration to say that the bulk of the securities on the list has been at one time or another manipulated—not for the purpose of creating a market or an appearance of activity in a new security, but, as stated in the Hughes Report, either "to create high prices for particular stocks in order to draw in the public as buyers or to unload upon them the holdings of the operators or to depress the prices and induce the public to sell."

The greatest sufferers from this form of swindling are not speculators but the small honest investors. The use of the market news columns of the newspapers is an invariable accompaniment and a necessary part of the equipment in playing the game. The payment of dividends represented to be earned but only too frequently not earned and the publication of articles calculated to show the prosperous and growing condition of the property attract the conservative investor. With such instances in mind as Rock Island, Metropolitan Street Railway, Third Avenue

Railroad, and New Haven, all selling at one time at over \$200 per share and paying large dividends and all of them since bankrupt or nearly so, what chance has an outsider of getting a square deal? What had become of the "insiders" investments in these properties when they came to grief? True, they still held control of the management, but the dear public, the widows and orphans, and men and women of small means who through years of toil and self-sacrifice had saved and scraped together the money with which to buy what they were led to believe was a safe, conservative investment, held the securities.

If manipulation can be made disreputable and can be discovered and punished, it can be prevented. If it can be prevented there will be no incentive for concealment and misrepresentation of the condition of a property. It can never be discovered until the transactions on the Exchange can be officially supervised and the books of its members subjected to inspection of some public authority. The Postmaster General is the logical official to whom to delegate this duty. These quotations on which the investors of the whole country rely are distributed through the mails, by telegraph and in the newspapers. If they are fraudulent and fictitious, representing bogus or manipulated transactions intended to deceive investors, the originators of the frauds should be punished through the same machinery as the Post Office Department so successfully employs to detect and prosecute other false statements that are carried in the mails. What is the difference between falsely describing the merits and value of stock representing a mine or a patent or any other form of business venture by means of a circular or advertisement and the use by these captains of high finance of the machinery and published quotations of the Exchange and of market "puffs" and press bureaus, which is their means of advertisement to attract investors to stocks that they are selling by having it appear that vast quantities of the stock are being daily bought and sold at given prices, thus deliberately representing that the general investing public believes that they have that value and are actively buying and selling them when in point of fact there are no such transactions to any extent except such as are being manipulated by them for the express purpose of deceiving and drawing in the unwary? The methods of the big operator, that are now considered legitimate, are far more insidious, dangerous, and effective than are those of the man who plies his disreputable

and precarious trade through circulars and advertisements. The latter is at least forced to disclose his identity and to be reasonably cautious lest he bring himself within the clutches of the federal law, which is ever on the alert to discover these violations; but the powerful men of high finance who have for years practiced this game with immunity are able to hide behind respectable and influential brokers and the machinery of the Exchange. For every investor who is swindled by the former method, tens of thousands are victimized by the latter. The former generally lands in jail; the latter are financial giants, philanthropists, leading citizens and pillars of society. Their offense is the same, only their methods are slightly different. It is the prostitution of the machinery of the Exchange that renders their raids on the public possible.

Paul Clifford's occupation was humane and courageous beside theirs. He was at least kind and generous hearted and took his chances. They "keep prayerfully within the law"—a law that is a disgrace to a community that rests in the smug self-complacency that it is civilized. The Exchange can put an end to this colossal confidence game whenever it chooses, but it is evident from its attitude that it will never choose, except spasmodically, when it is under fire, until it is compelled. It can never be compelled to do so until the books of the brokers can be opened and the facts exposed.

In view of the overwhelming evidence as to the existence of manipulation and the reports of various committees on the subject, I fail to understand why it is constantly asserted that there is no proof of the existence of manipulation, nor why we are constantly challenged in the face of these findings to disclose "when, where, or how these alleged transactions manifest themselves."

It matters not, however, whether the work of federal supervision be in charge of the Post Office Department or of the Treasury Department as part of the financial system, as in Continental countries, or of the Bureau of Commerce so far as concerns the quotations of shares of interstate corporations or of the Interstate Commerce Commission as applied to railroads, except that under our constitution the authority to regulate through the Post Office is less open to legal question.

Unless the power to unearth these frauds is lodged somewhere they cannot be discovered and manipulation cannot be stopped. The Exchange now has that power over the books of

its own members, but to ask or expect them to expose the law-breaking of their own members, by which they earn a large part of their income and which the Exchange encourages and insists to be within the rights of its members, is hardly a reasonable proposition for discussion.

Mr. Sturgis said that paying commissions to manipulate a market was like spending so much money for advertising the security. He was quite oblivious of the fact that a man who in the ordinary course of business should sell stock by advertising that so many thousand shares were actually being bought and sold day by day at a given price, and who was actually "going through the motions" and paying commissions on both sides of the transaction for the sole purpose of deceiving would-be purchasers whom he was thereby seeking to attract in the belief that such purchases and sales were genuine, would clearly be guilty of larceny. Yet that is precisely the intent and effect of these manipulated transactions that have formed a large part of the business of the Exchange. It is passing strange that the members are so obsessed by self-interest that they cannot appreciate the perfect analogy in principle between the two transactions.

Anyone who is interested in creating an active market in a given security should hereafter be required to frankly set forth his purpose over his own signature, advising its purchase, for which some one can be held responsible, instead of continuing the underhand methods of false rumors of impending developments, "melons" to be cut, dividends to be increased, large earnings, great market activity (manufactured for the purpose of misleading), etc., that are the accompaniments of "creating activity," "stimulating speculation," and of the various other forms of manipulation.

Successful manipulation of established securities depends on these methods. In order to get the speculative public interested in the stock there must be "something doing" in it. They must be made to believe that they are getting advance information of what is "doing." The whole performance when thus conducted is essentially in the nature of a "confidence game."

When manipulation has ceased or effective means for its discovery has been supplied, the time will have arrived to take up the question of speculation. Then and not until then can we have open, honest speculation based upon conceptions of value. Then and only then will speculative transactions furnish a guide to values.

I have read with interest and instruction the articles, addresses, and testimony of Professor Emery on this subject and would be at many points in accord with his views as to the value of speculation if it could be disassociated from manipulation; but I am unable to agree to his argument that there should be no limit even upon honest speculation.

I take issue with him distinctly in his championship of unrestricted short selling and insist upon the necessity for governmental regulation of all transactions on stock exchanges, which he opposes.

Here again the events of the past five months have demonstrated the peril of unrestricted short selling. The Exchange has been forced to admit that it is an evil that should be guarded against in troublous times by the enactment and rigid enforcement of a rule, now in force, under which an arbitrary minimum price has been fixed upon the bulk of its listed securities, so that they cannot be dealt in—that is, sold short—below that figure. Now that the London Exchange is under control of the Treasury Department all short selling is forbidden. The Stock Exchange view of short selling that prevailed before the experience brought about by the war is fairly set forth in the testimony of Mr. Sturgis before the Pujo Committee, as follows:

Q. What is the purpose of short selling?

A. Generally speaking, to make a profit.

Q. To make a profit by what process?

A. By repurchasing the short sale at a declining price.

Q. That is, by selling a security that you have not got and gambling on the proposition that you can get it cheaper and deliver the thing that is sold. Is not that it?

A. That is the usual process—selling when you think the price is too high and repurchasing when you think it has reached the proper level.

Q. But is it, or not, the process of selling a thing you have not got?

A. It is.

Q. And is it, or not, with the idea that it will go lower, or can be depressed down, and bought cheaper and delivered?

A. Truly.

Q. Do I understand that you regard that as legitimate and defensible?

A. Do you wish my personal expression of opinion?

Q. Yes.

A. I think it depends entirely upon circumstances.

Q. Under what circumstances would you regard that sort of short selling as legitimate and proper?

A. I should regard it so if there was a panic raging over the country and it was desirable to protect interests which could not be sold. I think it would be a perfectly legitimate thing to do.

Q. Let us see about that. If there was a panic raging over the country and a man sold stocks short, would not that simply add to the panic?

A. It might. Self-preservation is the first law of nature.

Q. But, as I understand it, if there is a panic raging over the country, you think it is defensible for a man to depress stocks by selling stocks he has not got, with the idea of adding to the panic?

A. Mr. Untermeyer, if a person has property which is absolutely unsaleable and he can, so to speak, protect his position by selling something for which there is a broad market—

Q. That he has not got?

A. (Continuing). I do not consider it wrong.

Q. Mr. Sturgis, let us just analyze that, because I do not think I understand you. You do not want to be misunderstood, do you?

A. It is not my wish.

Q. And I do not want you to be misunderstood. Do you mean to say that if there is a panic raging it is a defensible thing for a man, under any circumstances, to sell stock that he has not got, with the idea of getting it back cheaper?

A. I do think it is defensible. I certainly think it is defensible.

Q. For what purpose does he do that except to try to make money?

A. To try to save his credit, perhaps.

Q. How does he save his credit in a panic by selling stocks that he has not got, with the idea of adding to the panic and getting them cheaper?

A. Because if he can make a profit on that sale it may repair the loss that he has made on stocks he cannot sell.

Q. I see. You know that that would simply accentuate the fierceness of the panic, do you not?

A. It could not be otherwise.

Q. Certainly. And his only purpose in doing a thing of that kind in time of panic would be to make money, would it not?

A. To protect himself.

Q. It would be to make money, would it not?

A. Yes; and that would protect him.

Q. Of course it always protects a man to make money, no matter how he makes it, does it not?

A. Yes, sir.

Q. And that you think, is justifiable?

A. I think under those circumstances it is.

Q. You do not want to make any further explanation of that proposition, do you?

A. I do not.

Q. Is it any more justifiable for a man to sell short in a panic than in a normal market?

A. It depends very much upon his financial necessities.

Q. Do you regard it as justifiable in a normal market for a man to sell a thing he has not got, with the idea of depressing prices in order to buy in the stock at a lower level?

A. I think it is a question between a man and his own conscience.

Q. I am asking for your judgment. You have been many years in the exchange, and you are a careful observer, and I should like to know your judgment.

A. I think a great many people deprecate it. Others approve it.

Q. Do you approve it?

A. You ask me personally?

Q. Yes.

A. I never sold a share of stock short in my life.

A. Then you do not approve of it, do you?

A. I just happen not to have done it. My private business, if you please, I beg you to omit.

Q. I have not asked you your private business.

A. Yes; you asked me what I did myself.

Q. I did not ask you that, sir; I asked you what you thought about it.

Q. Do you approve of short selling in others?

A. Under what conditions?

Q. Under any conditions.

A. Yes; under some conditions.

Q. Do you approve of short selling in a normal market?

A. I will answer that question by saying it is a moral question with the individual himself. It is not up to me to express my opinion upon it.

Q. Do you personally approve of short selling in a normal market?

A. Not I, personally, no.

Q. You do not. And is it or not the fact that the bulk of the short selling is done in a normal market?

A. I should say no; more often on an excited market.

Q. It is done every day, is it not?

A. Oh, yes; to some extent.

Q. And it is done in large volume, is it not?

A. At times.

Q. The Stock Exchange does not discourage it, does it?

A. The Stock Exchange does not enter into it at all.

Q. The Stock Exchange does not discourage short selling, does it?

A. The Stock Exchange takes no position in the matter at all.

Q. Has the Stock Exchange any rule or regulation against short selling?

A. None.

Q. Why is it not just as simple a matter for them to have a regulation against short selling as to have a regulation against a broker splitting his commissions?

A. There is no regulation against short selling; that is all I can say to you about it.

The Stock Exchange can of course limit or stop short selling whenever it sees fit to do so. It is doing so now to a limited extent. There are many other ways in which it can be more effectively accomplished:

1. It can be limited as provided by the pending Owen Bill by forbidding a broker to lend his customers' stock in satisfaction of short sales. Or,

2. It can require each member to deliver at the Stock Exchange Clearing House certificates representing all the stock he has sold and take and pay for all the stock he has purchased the preceding day instead of merely settling differences between total purchases and sales and taking or delivering the balance, as is now done,—in the same way in which the bank clearing house requires every bank to surrender all the checks payable to it and receives all that are paid by it. The present regulations of the Stock Exchange Clearing House facilitate and are intended to facilitate gambling and especially short selling. Without them it could not be conducted on a large scale. Or,

3. The selling broker can be required to disclose the numbers

of the certificates. If he is selling for foreign account there is no difficulty in cabling the numbers of the certificates with the order. Or,

4. The Exchange can simply enact a rule forbidding it and enforce it just as it now enforces the rule for a uniform commission and far more readily, for it is more easy to control.

There is not time to review the argument for or against short selling nor is it germane to the present discussion. It bears, not on the question of whether there should be regulation, but on what shall be the character of such regulation.

I may, however, be permitted to say in passing that the champions of short selling studiously ignore the main argument against its legitimacy.

They insist that it is a safety valve against undue inflation and depression, in that it tends to check an undue rising and falling market in a security.

It is said that the short seller sells when in his judgment a stock is too high and is compelled to cover his sale by buying when it has reached what he believes to be its real value. That sounds well in theory. In practice short selling is a dangerous factor in times of depression. It is a direct incentive toward creating and accentuating panics in the security market.

But above and beyond this, it is not in fact to any extent employed, as is claimed, as a test of the value of a given security, and does not in practical operation perform any such useful function, except in rare cases. Speculation is the main feature of the stock market. The bulk of its transactions are in the nature of gambling, the brokers being themselves and for their own account the chief speculators, and the customers who trade through them buying and selling from day to day making up the remaining speculative contingent.

Mr. Sturgis testifies on this subject as follows:

Q. We are speaking of transactions that are made by members of your exchange in the way of short selling. Would not their books show whether or not they were selling short?

A. If the broker is operating for his own account, yes.

Q. And you say from a quarter to a half of the transactions on the exchange are for the broker's own account?

A. We agreed upon a third, I think.

The Commission appointed by Governor (now Mr. Justice) Hughes found:

It is unquestionable that only a small part of the transactions upon the Exchange is of an investment character. A substantial part may be characterized as virtual gambling.

The patrons of the Exchange may be divided into the following groups:

1. Investors, who personally examine the facts relating to the value of securities or act on the advice of reputable and experienced financiers, and pay in full for what they buy.

2. Manipulators, whose connection with corporations issuing or controlling particular securities enables them under certain circumstances to move prices up or down, and who are thus in some degree protected from dangers encountered by other speculators.

3. Floor traders, who keenly study the markets and the general conditions of business and acquire early information concerning the changes which affect the values of securities. From their familiarity with the technique of dealings on the Exchange, and ability to act in concert with others, and thus manipulate values, they are supposed to have special advantages over other traders.

4. Outside operators having capital, experience, and knowledge of the general conditions of the business. Testimony is clear as to the result which, in the long run, attends their operations; commissions and interest charges constitute a factor always working against them. Since good luck and bad luck alternate in time, the gains only stimulate these men to larger ventures, and they persist in them till a serious or ruinous loss forces them out of the "Street."

5. Inexperienced persons, who act on interested advice, "tips," advertisements in newspapers, or circulars sent by mail, or "take flyers" in absolute ignorance, and with blind confidence in their luck. Almost without exception they eventually lose.

A "short-selling" movement is not ordinarily directed against a particular security on its merits. In order to be successful on a substantial scale it attacks the entire market. The operator sells, without owning, a number of the most active securities on the list without regard to their merits or whether they are intrinsically worth more or less than their then selling price. There is rarely a substantial selling movement that does not attack and depress prices in the active stocks all along the line. The market prices move up and down by sympathy. That, being true, explodes most of the fine-spun theories as to the justification for short selling in fixing and steadying the value of a given security.

Unless I wholly misapprehend the operations of our financial system, the regulation by law of the Stock Exchange is an indispensable condition precedent to the destruction of the control of great financial credits by a few men or to any effective corporate reform in this country. It is by the illegitimate use of the facilities of this, the world's greatest security market, that many of the vast predatory fortunes have been filched from the public. The relation and importance of the Exchange to corporate independence of banking domination are little understood.

We shall accomplish nothing substantial in the direction of the coveted goal of financial emancipation toward which we are striving until this factor is appreciated and dealt with as an essential factor in the general scheme of reform.

The reasons in favor of federal regulation and control of the Exchange are vastly more weighty than those appertaining to any of the many occupations that are now required to be incorporated and are so regulated and controlled. As before stated, the Exchange is in no sense a private or local enterprise. It is grossly misleading to say, as has been argued by the defenders of its present irresponsible form of association, that it is not engaged in business and that its only function is to provide a meeting place where its members may deal with one another under prescribed rules.

The Exchange *is* engaged in business and of a highly important and distinctly national character. It owns the entire stock of the New York Quotation Co., which for a specified rental, supplies members' offices south of Chambers Street, New York City, with a ticker service that registers, impartially and without earmarks, every genuine and manipulated or fictitious transaction that takes place on its floor. For \$100,000 a year, under contract terminable upon one day's notice, it sells these quotations to a subsidiary of the Western Union, the Gold and Stock Telegraph Company, which also maintains a like ticker service. The latter, however, can supply the quotations *to such persons only as the Exchange approves* and under no circumstances to members' offices south of Chambers Street or to any competing exchange in New York City. The quotations are gathered upon the floor of the Exchange by its employees and transmitted by its own operators to the officers of the New York Quotation Co. and the Gold and Stock Company and thence distributed throughout the United States and by cable to foreign countries, but the Exchange retains the right to determine absolutely who shall and who shall not receive these quotations throughout the length and breadth of the land and all over the globe. There is no other method by which quotations of transactions on the Exchange are obtainable. A new agreement is said to have been recently effected with the Western Union that places these quotations still more completely in the control of the Exchange, if such a thing be possible.

The Exchange is the market place of the entire country and of

foreign countries for securities and the only public market in the United States where money is loaned and borrowed.

The business transacted by its members has no relation to state lines. It comes to them from almost every corner of the civilized world. It is not only nation-wide, but international in scope. Its members maintain private wires to all the principal cities of the United States, and the transactions conducted on this open board are for the account of customers from all parts of the country and from foreign countries.

Its hall-mark as to the genuineness of a certificate of interest in a corporation passes current everywhere, and it is rightly supervised with jealous care and at considerable expense to the corporations concerned.

It undertakes to prescribe the form and conditions of every corporate security in which it authorizes dealings, and its determination is final through its control over the listing of such securities. It reserves the right to enact the minutest details of the business and affairs of the issuing corporation, to impose its will in the matter of the procedure by which such corporation shall declare and pay interest and dividends and in the matter of the transfer agents and registrar and as regards endless other details; all this very properly on the ground that it is performing a public function national in its scope.

It jealously controls the reports of every transaction on its floor, issues and distributes the records of every purchase and sale, or offer of purchase and sale, which it thereby impliedly represents as an honest and genuine transaction. Courts of justice, trustees, financial institutions, tax officials, state superintendents of banks, trust companies, and fire and life insurance companies and other corporations that are subject to supervision in the several states throughout the country, and the comptroller of the currency in fixing the value of securities of national banks, and the public the world over, act on this information. It exacts compensation for the service of listing securities, sells the quotations to interstate and international telegraph companies for large sums of money, and scatters them broadcast through the newspapers, over the telephone and telegraph, but always under its control.

In the face of this array of undisputed facts, this stupendously powerful national and international agency of finance contends that it would not be a reasonable or legitimate exercise of the power of Congress to prevent the use of the mails, telephone,

and telegraph in interstate business as a means of perpetuating frauds upon the public. Congress not only has the unquestioned power—it has become an imperative duty. It is a necessity of modern finance from which there is no escape. It is far more important than the power now exercised by the Post Office Department over letters and prospectuses that are circulated through the mails, under which there have of recent years been so many wholesome convictions for fraudulent use of the mails.

Regulation is not only needed as a preventive of fraud. It will accomplish still greater results as a consecutive measure. Great and much needed reforms in the organization and methods of our corporations may be legitimately worked out through the power wielded by the Stock Exchange over the listing of securities. Much of the confusion and many of the defects in corporate regulation due to the diversity of state laws and the bidding of the states against one another in laxity of administration in order to attract corporations within their borders may be corrected, and uniformity of methods introduced, through the listing department of the Exchange.

Thus complete publicity as to all the affairs of a corporation may be uniformly enforced. It may and should require as a condition of listing a security that all the intermediate profits and commissions of bankers, brokers, and middlemen shall be fully disclosed, thus throwing about the investor the protection afforded by the Companies Acts of Great Britain and of other civilized countries. Every new security should be required to be publicly issued and offered to the public through the publication of a prospectus, so as to eliminate the secret profits of the middleman as far as possible. It is the only way to create confidence in and to popularize investments in corporate securities.

Detailed annual statements should be exacted from all corporations whose securities are listed, disclosing all payments made or profits or emoluments received, directly or indirectly, by officers, directors, bankers and brokers from the corporation, so that every security holder may know whether and to what extent his company is being exploited.

The scandalous practices of officers and directors in speculating upon inside and advance information on the action of their corporations may be curtailed, if not stopped, by requiring that the officers shall make full disclosures of all their transactions in buying and selling securities of their companies. The act in-

corporating the exchanges should provide that all statements required to be made by corporations shall be under oath and that false swearing shall constitute perjury. At present they are extra-judicial.

In short, the opportunities of the Exchange as an agency of corporate reform are almost endless, provided its own practices can be performed so as to entitle it to exercise these broad powers. Instead of the investment business of the country abandoning the Exchange as is now and has been to an extent the case for some time past, it will become necessary to the reputation and saleability of a security that it should be listed by reason of the protection thereby afforded the investor. The general public, which has grown to look upon the Exchange with distrust because of the practices that have been tolerated in the past, will be given new confidence in it when it is under legal supervision.

The argument as to the effect of this legislation in enlarging the usefulness of the Exchange has been referred to as an admission that the ultimate purpose is to secure publicity and uniformity in corporate transactions and general corporate reform through the use of the Post Office Department. It is nothing of the kind, although it would not be a misfortune if it should indirectly lead to uniformity in requiring publicity of the affairs of corporations and to restricting the bidding of the states against one another in laxity of administration. If it incidentally reduces the incentives for the organization of "carpet-bag" and "wild-cat" corporations it will hardly be objectionable on that ground if it is otherwise a legitimate exercise of power.

It is as essential to require that the public market, whose quotations are to be carried by the mails, shall be restricted to the listing of securities that conform to given requirements of publicity of their affairs as it is that the quotations of those securities shall represent only actual and not fictitious or manipulated transactions. This is necessary if the use of the mails to facilitate fraud is to be prevented.

There is no ulterior purpose in the first requirement, even though it may serve another useful purpose. The intended protection of the public cannot be secured without compliance with both requirements.

If there has been any argument advanced to justify our permitting this unincorporated association to determine, without public supervision, when and under what conditions these great security

markets shall be opened and closed, it has not been brought to my attention. The action thus taken is of the most distinctive public concern. It directly affects the fortunes of every business and financial institution in the country. Why should we tolerate its being longer subject to the whims or the judgment, good or bad, of a few interested men who are responsible to no one for its far-reaching results?

Incorporation is not, however, the only means of regulation. It has been put forward as the most practicable means and as rendering regulation effective with the least possible interference with the liberty of the members of the Exchange.

The suggestion that the members be required to keep separate books containing entries of transactions on the Stock Exchange and that these books be subject to inspection by public authority for the purpose of discovering manipulation and other violations of law, has met with a great outcry from the gentlemen whose transactions are thus sought to be subjected to supervision. They entirely overlook the fact that there are innumerable occupations, only remotely affecting the interests of the public, in which such inspection is provided for by state and federal authority. Manipulation can no more be discovered without such power of supervision than could the practice of rebates have been repressed and punished without access by the Interstate Commerce Commission to the books of the railroads. The same is in a degree true of the violations of the Anti-Trust Law. Only in isolated instances have they heretofore been discoverable, but with the aid of the Trade Commission Bill it will be possible to reach the secret agreements and arrangements in restraint of trade that have thus far eluded detection.

With few exceptions the members of the Exchange are mere puppets of the big operators and financiers with inside information in the practice of manipulation. They can be reached only through the brokers' books.

It was established before the Pujo Committee that many of these accounts are kept on the books of the brokers by numbers and that the names of the principals were unknown to those in charge of the accounts. In that way the identity of the men who were "rigging the markets" was effectively hidden. One of the first acts of the regulating body would be to put an end to such practices and to require that the books of the brokers should state the facts, through which the operations of their principals would be discoverable.

Certain objections have been urged against the regulation of the Exchange by public authority, which should now be considered.

Mr. Van Antwerp has been the chief spokesman in voicing these objections. They were summarized by him a few weeks ago from his press bureau as follows:

1. That the subject of incorporating the Exchange was considered by the New York State Senate in 1913 and there overwhelmingly rejected. The fact is that the bill that was then presented was opposed by me before the Senate Committee as a mere subterfuge and as intended to defeat effective regulation by applying a quack remedy. As bearing on the conclusiveness of this "argument" it may not be out of place to remark here parenthetically that the body which defeated the bill is the same legislative body that, by an overwhelming vote, acquitted one of its members (Senator Stilwell) of the charge of bribery on identically the same evidence on which he was a few weeks later convicted in a criminal court, and for which he is now serving a term in the state prison.

2. It is next said that there is no public demand for this reform. In evidence of that fact Mr. Van Antwerp asserts that at the hearing before the United States Senate Committee on the pending Owen Bill for the enforced incorporation and regulation of the Exchange: "Thirty-six witnesses appeared against the bill and only one in favor of it—the latter the lawyer who drew the bill."

The reference to "the lawyer who drew the bill" is intended for me; but Mr. Van Antwerp omits to state that it was prepared by me as counsel for the House Committee on Banking and Currency; that it was revised by the Committee; that it was recommended by it; and that the same bill has been introduced by Senator Owen in the Senate and by Congressman Henry, the chairman of the Committee on Rules of the House (who is not a member of the House Committee on Banking and Currency); and that this bill is now pending in both Houses.

The facts are further:

(1) That there were in all eighteen and not thirty-six witnesses heard before the Committee, as appears from the official record of the proceedings.

(2) That none of them were under oath or subject to cross-examination.

(3) That three of the eighteen in favor of the bill, and that

of the fourteen who argued against the bill in its then form a number of them directed their arguments to the particular phraseology of certain parts of the bill and that of this number seven were presidents, ex-presidents, governors or members of the Stock Exchange, whose abuses were sought to be corrected by the bill; one was the general counsel for the New York Stock Exchange and another the general counsel for the Consolidated Stock Exchange. They were there in the capacity of counsel and made oral arguments and filed briefs and are by reason of that fact—and that alone—included in Mr. Van Antwerp's "list of witnesses." Two were the president and counsel for the Boston Chamber of Commerce, both of whom admitted the wisdom and necessity for federal regulation and presented a proposed bill embodying their views of the form of regulation they deemed desirable. One was a merchant who had been a member of the Hughes Commission and whose testimony was directed largely to explaining and justifying the virtues of watered stock; and the three others were financial experts, including Professor Emery.

(4) That the bill which is described by Mr. Van Antwerp as having "only one in favor of it—the lawyer who drew the bill"—is the identical bill that was favorably reported by the Pujo Committee of the House of Representatives in February, 1913, after a long investigation in which many witnesses were examined and cross-examined under oath, with the recommendation of ten of the eleven members of that Committee, including all of the seven Democratic members and three out of the four Republicans.

(5) That it is the same bill that has received the unqualified approval of five of the seven Democratic members of the present Senate Committee on Banking and Currency.

Inasmuch as it is nobody's particular business except that of the general public, which has no spokesman, to press this reform, whilst it *is* the particular business of the Stock Exchange and its officers and specially employed counsel to defeat every attempt to bring the Exchange under legal regulation, the consensus of independent opinion in favor of regulation as represented in the committees of Congress would hardly seem to justify the implication that there is no public sentiment in favor of this reform.

3. The most surprising and, if I may say so, the most misleading of the arguments urged against regulation, is to the

effect (1) that if the Exchange were now incorporated or under federal regulation its action during the recent crisis arising out of the war in prohibiting its members from trading privately in stocks that were not listed on the Exchange, and with which the latter has no more concern than a stranger and with respect to which it has legitimately no more power to control its members than is possessed by a stranger, would have been rendered impossible; and (2) that such action would in that event have been preventable through injunctions issued by the courts against the exercise of its unauthorized restraint upon the free action of its members in matters not the concern of the Exchange.

There is no means of knowing on what this fanciful assertion is based. It has no legal warrant so far as can be ascertained. The fact that the Exchange has been able to enforce this unauthorized action against its members does, however, shed a flood of light upon the extent of the unlawful domination of the Exchange and the despotism that it is able to wield over its members with respect to their dealings in securities that are not listed or dealt in on the Exchange and with which the latter has no concern.

I do not criticise the general acquiescence by the members in the action it has taken, however arbitrary it may have been. It was an act of self-preservation and would probably have been agreed to for that reason whether the Exchange was or was not subject to regulation by the authorities. But there is no reason why that act or any other act of a body of this character, exercising public functions, should not be subject to the scrutiny of the courts if any member felt that his legal rights had been invaded, without subjecting him to arbitrary expulsion for daring to invoke the law of the land. The suggestion that this, the most important link in our financial structure, should be set apart and permitted to be a law unto itself, lest the courts might otherwise interfere to review its action and redress grievances, is inadmissible in any community that professes to be governed by law.

The Governors of the Stock Exchange are obsessed with the lawless notion that the great peril against which they must jealously guard their institutions is the possibility of reserving to a member the right of appeal to the courts from their judgments—however unrighteous and despotic they may be. Unfortunately the decisions of the courts, based upon their present peculiarly

irresponsible form of organization, have encouraged them to believe that they are a law unto themselves. It is largely because of this current of judicial authority that the law requires change.

The Exchange dreads regulation because, as it naïvely admits, regulation would interfere with that despotism which they call their "disciplinary" powers that are not subject to review, as they should be. Why should not a member have the right to a determination by a court of whether his engaging in a private transaction for the purchase or sale of stock not listed on the Exchange and with which the latter has nothing to do, either for his own account or for others, is within his rights as a citizen, without being summarily expelled for his temerity in daring to appeal to a court of justice?

I am not discussing the wisdom of this particular regulation under the exceptional circumstances under which it was put into effect, nor do I believe that it would have been questioned, whatever may have been the right of members to secure a judicial review. A rule that might be wise and justifiable under certain conditions may be intolerable under others. If it is right we cannot assume that the courts will overturn it; if it is wrong the power should be lodged somewhere to correct it.

I am objecting to the principle involved in the arbitrary contention that the Exchange must be permitted to remain unregulated so that its acts, however ill-considered or oppressive, shall not in any event be subject to judicial review. It is a plea for mob law. No more insidious form of anarchy was ever preached.

We are finally told that as the result of the foolish, muck-raking agitation for regulation which the Exchange has never tired of denouncing, there was enacted in 1913 a law against manipulation and that anyway none has been practiced during the past few weeks of stagnant business since the Exchange reopened. Granted, though I doubt it. In the absence of regulation there is no way of proving or disproving this statement, and as before stated the law is a humbug and it would in the absence of regulation be a dead letter in any event.

The Exchange has openly and heatedly defended the practice so long and so recently that it does not seem reasonable that it would now go out of its way to end it, especially as it has been an important source of profit to so many of its members, who do not yet consider it morally wrong.

If this argument is sound, we should repeal all supervisory and

visitorial powers over our banks, trust companies, railroads, life insurance companies, packing houses, factories, and other businesses having a quasi-public relation, for have we not stringent penal laws against their unlawful doings and those of their officers?

Officers of corporations may then with impunity steal from their banks, packing-houses may be in a state of filth breeding disease, all health regulations and safety appliances in factories may be disregarded and every penal law affecting their safety defeated, since there would be no way of ascertaining the extent of the violations.

The superintendents of banks and insurance may now overhaul all the accounts and transactions of the institutions under their charge and may examine the officers and directors of the corporations under oath as to all matters pertaining to the corporation and thus discover violations of law. The Exchange indignantly persists that to subject its members to like visitation involves an imputation upon their honor and they resent it with as much heat as if there were no precedent and no necessity for action.

In the absence of these powers of visitation and regulation over banks, life insurance companies and other businesses, we would be in the same predicament as to them that the Exchange claims we now are with respect to it—we might have ample repressive and punitive laws to reach illicit practices, when discovered, but no means of discovering them, and so we may as well have no laws whatever.

Lastly, it is said that incorporation or regulation of the Exchange would necessarily involve the right of the court to review the discipline of the members, which must at all costs be prevented, since it would mean the granting of injunctions to stay the action of the Exchange pending review and this would be destructive of effective control over the members. Summary action is claimed to be necessary to enforce discipline.

It by no means follows that regulation would involve undue interference with the discipline of the members. That would rest in the judgment of the public body having the regulation in charge. All would depend on the form of the legislation. The Exchange has no right to assume that anything would be done to interfere with its efficiency. This is believed to be a pretext. Its real fears are: (1) that the limitation upon its membership, its rigidly enforced rule requiring the charging of uniform commissions, its at present unreviewable discipline of members for action involving no moral delinquency, its unwarranted control over public quotations

of securities, and its despotic rule over the smaller Exchanges would be ended; and (2) that its transactions, involving the manipulation of prices, would come under the ban of the law and be discoverable and punishable. In this it is entirely right. That and the control over the opening and closing of the Exchange, and the conditions under which securities shall be listed and quotations spread over the world, are among the principal grounds for demanding regulation.

The Exchange rightly scents the danger to its illicit transactions and lawless arrogation of power from regulation, hence the desperate struggle it is waging against the inevitable.

I believe it fails, however, to appreciate the broader aspects of this important public question and the eventual gain to it in increased stability and revived public confidence.

In this connection I take the liberty of repeating the statement made by me before the United States Senate Committee:

I am convinced that the time will come, and before long, after regulation has been enforced, when those who are now bitterly assailing the champions of this legislation in the vain hope of thereby diverting the issue will find that it has marked the dawn of a new era of usefulness and prosperity for them, and that the Exchange will feel grateful to those who have pointed the way.